The Corporation Journal

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SPECIAL NOTICE.

INCOME TAX.

ANNUAL RETURNS OF NET INCOME must be filed by all corporations on or before March 1, unless extension of time is granted by the collector. Forms may be obtained from the local collector of internal revenue.

CAPITAL STOCK TAX ON CORPORATIONS.

RETURNS MUST BE FILED IN JANUARY by all corporations which were engaged in business between July 1, 1915, and June 30, 1916, and whose capital stock is of a fair value of $75,000 or more. Forms may be obtained from the local collector of internal revenue. This tax is new and has no connection with the income tax.

DOMESTIC CORPORATIONS.

ARIZONA.

HOLDING POWERS. "An examination of the statutes of this state fails to disclose any express authority for a corporation organized under its laws to hold or vote stock of other corporations. With the statutes of the state silent on this subject the power of a corporation to hold stock of another corporation is clearly restricted." Central Life Securities Co. v. Smith, 236 Fed. 170.

CALIFORNIA.

STOCKHOLDERS' LIABILITY. A seaman recovered judgment against a California corporation for injuries received while in its employ. The corporation became bankrupt and he sued the shareholders under section 3, art. 12 of the California Constitution, which provides that every corporate shareholder shall be

personally liable for such proportion of all the corporate debts and liabilities incurred during the time he was a stockholder as the amount of shares owned by him bears to the whole of the subscribed capital stock. He is entitled to recovery. The liability of shareholders is primary. Buttner v. Adams, 236 Fed. 105.

COLLATERAL AGREEMENT FOR CANCELLATION OF STOCK SUBSCRIPTION. A duplicate copy of a subscription contract to stock, retained by the subscriber, contained the following memorandum on its back:

"Dec. 4, '11. Ten months after date if holder of this contract is for any reason dissatisfied, we agree to return note or cash equivalent. H. C. Coffin, Tidewater & Southern Railroad Co."

This condition was not indorsed on the back of the original subscription retained by the agent of the company. Within ten months of the date of his subscription the subscriber requested the return of his note. which the corporation refused. Action was brought on the note by a third party to whom it was assigned, but recovery is denied. It was contended that the collateral agreement for cancellation was invalid because it resulted in a secret advantage in the nature of a fraud upon subsequent subscribers and creditors of the corporation. As to this the Court says: "Whatever secrecy there was in respect to this agreement was imparted entirely by the corporation itself through the act or neglect of its authorized agent; and this being so, and no rights of subsequent subscribers or creditors being involved in the case, it would be a manifest fraud upon the defendant to permit the corporation to take advantage of its own wrong by repudiating its agreement while enforcing the defendant's note which was evidently given only because of the reservation in said agreement permitting its recall." Tidewater Southern Ry. Co. v. Vance, 160 Pac. 1097.

CONSIDERATION FOR ISSUANCE OF STOCK. A corporation may exchange its stock for property and assume indebtedness of the vendor in connection with the business or property acquired. Western Nat. Bank v. Wethman, 161 Pac. 137.

COLORADO.

LIABILITY OF DOMINANT CORPORATION FOR ACTS OF SUBSIDIARY. The Denver & Rio Grande R. Co. owned all the stock of the Midland Railway Company. It was therefore bound to act in the utmost good faith towards its creditors. Such creditors, on allegations of fraud, may maintain a suit for an accounting against the controlling corporation. Vallery v. Denver & R. G. R. Co., 236 Fed. 176.

INDIANA.

POWERS AND DUTIES OF RECEIVERS. It is only in exceptional cases that stockholders may bring or defend corporate litigation. The same general rules apply when the corporation is in the hands of a receiver. He is the proper party

to bring or defend any suit involving the corporation. He represents both stockholders and creditors, "and is to be regarded as their trustee, charged with the duties of collecting, assembling, protecting, and preserving the assets of such corporation for the benefit of those entitled thereto, subject, of course, to the orders and directions of the court whose officer he is." Marcovich v. O'Brien, 114 N. E. 100.

MAINE.

AUTHORITY OF HOLDING COMPANY. A Maine corporation organized under Rev. St. Chap. 47, sec. 6, providing for the formation of a corporation "to carry on any lawful business anywhere," are not authorized to acquire stock in an insurance company. This section authorizes the purchase of stock in companies that follow any line of business provided for in Chap. 47, but does not authorize a corporation to engage indirectly, by stock control, in a business which is not permitted by said chapter, where the laws of a foreign state do not permit the holding of stock in one corporation by another, a corporation cannot be lawfully organized under Chap. 47, for the purpose of holding such stock. Thus a Maine corporation cannot lawfully control by stock ownership an insurance company organized under the laws of Illinois. Central Life Securities Co. v. Smith, 236 Fed. 170.

MANITOBA.

LIABILITY FOR UNPAID STOCK. A subscriber made a part payment on shares and then refused to pay the balance, alleging that the directors were not duly elected or qualified. The legality of the meeting of directors at which the shares were allotted and the by-laws adopted was questioned particularly from the fact that the letters patent were dated the day following the date of the meeting. The Court thought this was a clerical error. However, the defendant was himself a director and knew that the plaintiff bank advanced money to the corporation on the strength of an assignment of the amounts unpaid by the shareholders, and is therefore estopped from denying his liability. Union Bank of Canada v. Gourlay, 31 D. L. R. 565.

MINNESOTA.

AUTHORITY OF OFFICERS TO EXECUTE CORPORATE NOTE. G. S. 1913, sec. 6172 provides that the duties of the officers of a corporation "shall be prescribed in the certificate of incorporation or in the by-laws." A corporation adopted by-laws containing this provision: "All notes given by the company shall be signed by the president and by the secretary." Notes of the company signed by the president alone are not binding upon it, even in the hands of an innocent purchaser for value. An inspection of the notes and the by-laws would have disclosed the improper execution of the notes. Bloomingdale v. Cushman, 159 N. W. 1078.

MISSOURI.

FIDUCIARY RELATION OF PROMOTER. Money deposited by a promoter in the name of a corporation in process of organization is not impressed with a trust so as to be subject to restoration by a third party to the corporation if used by the promoter to pay an individual obligation. The funds did not belong to the corporation as it was not then in existence. Reynolds v. Title Guaranty Trust Co., 189 S. W. 33.

NEW JERSEY.

POWER OF RECEIVER TO EXAMINE CORPORATE OFFICERS AND PUNISH FOR CONTEMPT. Section 71 of the Corporation Act (Revision of 1896) gives receivers authority to compel any person to disclose any knowledge he may possess respecting the affairs and transactions of the company. This law is not in conflict with the constitutional requirement of due process of law. Upon an examination under this section, a witness may not decline to be sworn upon the ground that his evidence would incriminate himself; he may assert his privilege as to each question when it is asked. The receiver may exclude from the room any person who is to be examined as a witness. Conover v. West Jersey Mortgage Co. (Chancery Court, Dec. 16, 1916, not yet officially reported.)

CORPORATE STOCK HAS A SITUS in the state wherein the corporation is chartered, regardless of the location of the certificate. A New Jersey corporation may bring a suit in that state to have shares of its stock declared to be void, securing jurisdiction by substituted service upon a non-resident owner. Hudson Nav. Co. v. Murray, 236 Fed. 419.

NEW YORK.

VALUATION OF GOOD WILL. The good will of "Tiffany & Co.," which has been established for more than sixty years, is for the purpose of a transfer tax upon shares of its stock held by a decedent, worth ten times the amount by which the average annual net profits exceeded 6% on the capital employed. "The cases in this country are not uniform in regard to the number of years purchase by which the average annual net profits may be multiplied for the purpose of determining the value of the good will. Most of the American cases adopt a period ranging from two to six years, the number being dependent upon the nature of the business, the length of time during which it has been established at a particular place and the extent to which it is known to the public." Matter of Moore, 97 N. Y. Misc. 238.

STOCKHOLDERS' ACTION TO RECOVER FOR SPOLIATION OF CORPORATE ASSETS as the result of an illegal conspiracy to misappropriate its property through the organization of various corporations and consolidating their interests, the real defendants acting through dummy directors, is stated in Meredith v. Art Metal Construction Co., 97 N. Y. Misc. 69.

PROTECTION OF MINORITY STOCKHOLDERS. The authorization of a lease by the Public Service Commission, does not debar minority stockholders from objecting to it, on the ground that it is distructive of their interests and illegally created by the majority. The Public Service Commission is constituted, not to protect the rights of stockholders as between themselves, but to protect the rights of the public. Westchester Fire Ins. Co. v. Syracuse, B. & N. Y. R. Co., 161 N. Y. Supp. 759.

CORPORATE POWERS. It would be *ultra vires* for a banking corporation to engage in the theatrical business or to become a partner therein. But a lease of a theater owned by the bank on terms by which it would participate in excess of a certain amount, did not make the bank a partner. Cole v. Rome Sav Bank, 161 N. Y. S. 15.

INCREASE IN SALARIES by majority directors, against the protest of a minority director and without sanction of the majority of the stockholders is illegal. Directors attempting such increase are not entitled to compensation as on a *quantum meruit*. Kreitner v. Burgweger, 174 N. Y. App. Div. 48.

MISLEADING PROSPECTUS. The impression ordinarily to be created by a prospectus is the one from which liability must be gauged. Responsibility extends as well to facts suppressed as to those stated, and involve both the officers issuing the prospectus and the corporation which has benefited through the wrongful sale of its stock. Churchill v. St. George Development Co., 174 N. Y. App. Div. 1.

AN AGREEMENT THAT DIRECTORS BE ELECTED other than by a plurality vote as prescribed in Section 25 of the Stock Corporation Law, is invalid. Reiss v. Levy, 161 N. Y. Supp. 1048.

NORTH CAROLINA.

GUARANTY OF DIVIDENDS OF ONE CORPORATION BY ANOTHER. Preferred stock of the American Warehouse Company contained the following endorsement: "In each and every consecutive year from and after this date, should the dividends or any part thereof, called for upon the face of the within certificate not be paid on its due date, for value received the Spray Water Power and Land Co. guarantees and binds itself to pay in cash, 10 days after notice of such default, to the holder of the within certificate, any such deficiency in the dividend as may arise from the failure of the American Warehouse Co. to pay its annual dividend as stated in said certificate. This agreement is binding during the life of the Spray Water Power and Land Company." The Warehouse Company was subsequently adjudicated a bankrupt and a holder of some of its preferred stock bearing the above guaranty sued the Water Company thereon. The Water Company is not liable. The guaranty was made in contemplation of the continued existence of the warehouse company. When the principal subject to which a contract relates, ceases to exist, the obligation is at an end. Stagg v. Spray Water Power & Land Co., 89 S. E. 47.

EFFECT OF CHANGE OF CORPORATE NAME. The Southern Land Reclamation Company changed its name to The New Holland Farms, Inc. Under its new name it was not a successor to the corporation under the old name. The change simply effected an amendment to the charter. "It remained, and continued to be, the original corporation, with all of the powers and liabilities possessed and assumed prior to the amendment; it was, in no legal sense, a new corporation; and, therefore, was not 'the successor' of the reclamation company, but is the same corporation with another name." Board of Com'rs., etc. v. A. V. Wills & Sons, 236 Fed. 362.

PENNSYLVANIA.

SIMILARITY OF CORPORATE NAMES. The Attorney General suggests that the name "Sterling Smokeless Coal Company" is sufficiently similar to "Sterling Coal Company" to justify its refusal. "In the consideration of the similarity of corporate names, the state should consider not only whether such similarity would operate to disconcert it in its imposition and collection of taxes or produce uncertainty in the service of judicial process but also, and of equal importance, whether such similarity would produce confusion in the public mind, or hamper the activities of the Federal government, especially that of its postal service. To determine the question exclusively by its effect on the executive and judicial activities of the state is to make the criterion too narrow." 2 Dep. Rep. (1916) 2821.

TRANSACTIONS WITH SUBSIDIARY CORPORATIONS. A controlling corporation is held to the strictest account in dealings with its subsidiary and has the burden of proving their fairness. Pennsylvania Canal Co. v. Brown, 235 Fed. 669.

RESIGNATION OF A DIRECTOR need not be in writing. A written statement is merely a more orderly and proper method of procedure. In re Kisner's Estate, 99 Atl. 168.

SOUTH CAROLINA.

ELECTION OF DIRECTORS. At a meeting of stockholders for the election of directors, 96 out of a total issue of 100 shares were represented in person or by proxy, the majority having 57 shares and the minority 39 shares. A motion was made and carried to elect seven directors. Up to that time there had been five. The majority voted for seven directors and the minority, by cumulating their votes on four, secured a majority of the directors on the face of the tabulation by the teller. The chairman of the meeting refused to announce the election of these four, and declared the election void. The minority withdrew, but the majority remained and held another election at which they elected four of the majority and three of the minority as directors. The meeting had a right to reconsider its action, in the absence of a constitution or by-law provision in restraint thereof, and the re-election is valid. State v. Ellison, 90 S. E. 699.

SOUTH DAKOTA.

POWERS. "The laws under which a corporation is created is as much a part of its charter as if actually written into and made a part of the charter. The laws standing by themselves do not constitute the charter; neither do the articles of incorporation." In re Hanson's Estate, 159 N. W. 399.

TEXAS.

LOST STOCK CERTIFICATE. A claimant petitioned a corporation in 1881 for recognition as the owner of a lost certificate. The petition was denied. Suit subsequent to 1909 to compel recognition is barred by statute of limitations. Converse v. Galveston City Co., 189 S. W. 539.

EFFECT OF DISSOLUTION. Voluntary dissolution terminates a corporation's existence, so that it has no capacity to prosecute an appeal. The action will be abated, just as an action against an individual will be abated, upon "suggestion" of his death. Corsicana Transit Co. v. Walton, 189 S. W. 307.

ULTRA VIRES. A transportation corporation cannot contract to indemnify an employee for hospital expenses, as such a power is limited to insurance companies. A railroad which deducted $1 per month for hospital fees is not liable to an employee for money spent by him for hospital accommodation, surgical treatment and drugs, there being nothing to show that the company refused him admission to its own hospital. Gulf, C. & S. F. Ry. Co. v. Goodman, 189 S. W. 326.

DISSOLUTION AND RECEIVERSHIP. Revised Statutes, Article 1203, authorizes stockholders of 25 per cent. of the stock to prosecute a suit for dissolution of an insolvent corporation. No notice of such suit is necessary. A stockholder having any number of shares may apply for appointment of a receiver, but notice must be given, and he must have some claim against the corporation the same as a creditor must have. Kokernot v. Roos, 189 S. W. 505.

WASHINGTON.

ISSUANCE OF STOCK FOR PROPERTY at an overvaluation cannot be objected to by subsequent stockholders, no rights of creditors being involved. Eggleston v. Pantages, 160 Pac. 425.

WEST VIRGINIA.

RIGHT OF OFFICERS TO COMPENSATION. An officer who is also a director is not entitled to compensation for discharge of his official duties, in the absence of a special contract, duly authorized by by-laws, by the stockholders or proper action of the directors. "Whether this general rule applies to an officer who is only a stockholder and not a director is a question upon which the authorities are divided." Goodin v. Dixie-Portland Cement Co., 90 S. E. 544.

WISCONSIN.

TRUSTEE OF A CORPORATE MORTGAGE has no authority to receive payment for bondholders, merely because it is trustee, before the bonds are due according to the trust deed. Connell v. Kaukauna Gas, Electric Light & Power Co., 159 N. W. 927.

UNITED STATES SUPREME COURT.

MISTAKES IN REPORTS. The Northern Pacific Railway Company failed to file, for five successive days, with the Interstate Commerce Commission, a report of violations of the hours-of-service act, as required by an order of the Commission. The alleged violation was with respect to five employes who reported at 8.10 P. M. to take charge of a wrecking train, but were not needed until 10:35. The officials thought that the time of the men should be reckoned from 10:35 and not from 8:10 and hence omitted them from their report of those kept on duty for over sixteen hours. The United States Supreme Court holds that the law was not violated, as the mistake was an innocent one. In the course of its opinion the Court made the following observations, apparently applicable to a great many reports required of corporations: "There are, to be sure, many statutes which punish violations of their requirements regardless of the intent of the persons violating them, but innocent mistakes, made in reporting facts, where the circumstances are such that candid minded men may well differ in their conclusions with respect to them, should not be punished by exacting penalties, except where the express letter of the statute so requires. * * * Statutes should be construed, as far as possible, so that those subject to their control may, by reference to their terms, ascertain the measure of their duty and obligation, rather than that such measure should be dependent upon the discretion of executive officers, to the end that ours may continue to be a Government of written laws rather than one of official grace." The United States v. Northern Pacific Ry. Co., (U. S. Supreme Court, No. 44, October Term, 1916).

FOREIGN CORPORATIONS.

CONNECTICUT.

APPOINTMENT OF RECEIVER of a foreign corporation will be decreed at the instance of stockholders, as such a corporation submits itself to the state laws upon doing business therein. Dissolution, however, can be had only in a suit by the sovereignty creating the corporation. Lowe v. R. P. K. Pressed Metal Co., 99 Atl. 1.

ILLINOIS.

DOING BUSINESS. A foreign corporation in holding all or the controlling interest in the stock of an Illinois corporation, is held to be doing business in Illinois. Central Life Securities Co. v. Smith, 236 Fed. 170.

IOWA.

SERVICE OF PROCESS on its county sales agent in a suit for breach of warranty is valid against a foreign automobile corporation. Pugh v. A. D. Bothne Co., 159 N. W. 1030.

STOCKHOLDERS' LIABILITY in a South Dakota corporation should be determined by the laws of that state, where it rested upon a note, payable in that state. Johnson v. Morgan, 160 N. W. 2.

KENTUCKY.

DOING BUSINESS. The Larkin Company of Buffalo, New York, has branch offices in different parts of the United States, from each of which a great variety of articles are supplied within the territory covered by that branch. Daviess County, Kentucky, is supplied from Buffalo. Customers send in orders by mail to any branch, but they are forwarded to the branch supplying the territory from which the order is received. Delivery is made by freight, express or parcel post, direct to the purchaser or to one who purchases in bulk and distributes to the others. The company advertises its goods by "traveling showrooms." These are moved from place to place, remaining in one place not exceeding five or six days. These transactions constitute interstate commerce in Kentucky as distinguished from "doing business" in a sense requiring qualification under foreign corporation laws. The question is presented in a prosecution brought by the State for penalties prescribed by the statutes. Larkin Co. v. Commonwealth, 189 S. W. 3.

SERVICE OF PROCESS. A foreign corporation ships automobiles to a firm pursuant to a "distributor's agreement." This agreement provides for the sale of the cars shipped to the distributor, title being retained until payment is made. Such a distributor is not an agent of the foreign corporation so as to render service upon its members, binding upon the corporation. Barnes v. Maxwell Motor Sales Corp., 189 S. W. 444.

NEW JERSEY.

LIABILITY OF STOCKHOLDERS. A New York corporation with a capital of $150,000 purchased land worth not more than $4,500, paying therefor $149,500 in stock and giving its promissory note for $35,000. In placing such a valuation the directors perpetrated an actual fraud. The stockholders are liable to creditors of the corporation to the amount of their holdings, sufficient to meet the debts of the company. McDermott v. Woodhouse, 99 Atl. 103.

NEW YORK.

WHAT CONSTITUTES LOCATION IN NEW YORK? A railroad corporation is organized under the laws of the United States. Its lines are located in

the Southwest and its operating offices are in Texas. Its stockholders' and directors' meetings are held in New York, and it maintains its executive offices and keeps its stock certificate books and corporate records there. It is "located" in New York so as not to be subject to attachment as a foreign corporation. Gould v. The Texas & Pacific Railway Co. (New York County Supreme Court, Special Term Part I, N. Y. Law Journal, Dec. 15, 1916).

TEXAS.

ALLEGATION THAT PLAINTIFF FOREIGN CORPORATION HAS OBTAINED A LICENSE to transact business in the state is unnecessary unless the petition discloses that the corporation is doing business in the state in such a manner as to require qualification. Crews & Williams v. Gullett Gin Co., 189 S. W. 793.

TAXATION.

ALABAMA.

ANNUAL FRANCHISE TAX. Domestic corporations pay an annual franchise tax upon their paid-up capital stock, foreign corporations pay upon the basis of property within the State. The Kansas City, Memphis & Birmingham Railroad Company is a consolidated corporation, under concurrent acts of Tennessee, Mississippi and Alabama. Its annual franchise tax in Alabama was assessed upon its entire capital stock. The railroad company contended that this was a denial of the equal protection of the laws. The United States Supreme Court, however, upholds the assessment. "There is no denial of equal protection of the laws because a state may impose a different rate of taxation upon a foreign corporation for the privilege of doing business within the State than it applies to its own corporations upon the franchise which the State grants in creating them." The cases of Kansas City, etc., Railway Co. v. Kansas, 240 U. S. 227 (Corporation Journal, page 132) and Western Union Telegraph Co. v. Kansas, 216 U. S. 1 (Corporation Journal, page 72), are distinguished. Kansas City, Memphis & Birmingham R R. Co. v. Stiles (U. S. Supreme Court, No. 212, October Term, 1916).

KENTUCKY.

KEEPING CORPORATE STOCK IN A DEPOSIT BOX in St. Louis does not deprive it of its situs for taxation in Louisville, the home of the owner. Ewald's Ex'r v. City of Louisville, 189 S. W. 438.

MISSISSIPPI.

REPORTS AND TAXATION OF CAR COMPANIES. Laws 1912, c. 113, sections 1–8, designates as freight line companies, every corporation engaged in the business of operating, furnishing, or leasing cars for the transportation of freight on railroad lines in whole or in part within the state not owned or operated by such

corporation. This includes a packing company operating refrigerator cars for the transportation of its own products. It is not unconstitutional to require such corporations to make certain sworn statements to the state auditor and to impose a tax upon their gross earnings. Cudahy Packing Co. v. Stovall, 72 So. 870.

Nearly all the states have special statutory provisions requiring car companies to make reports and to pay taxes. The Corporation Trust Company maintains a special report and tax service for such companies, sending timely notice to their attorneys of reports and tax matters requiring attention, and furnishing information regarding forms, practice and rulings. Write to the New York office for further particulars.

NORTH CAROLINA.

LICENSE TAX ON FOREIGN INSURANCE CORPORATIONS requiring them to pay 2½ per centum upon the amount of their gross receipts in the state is valid. "It is within the power and discretion of each state to impose an annual or other license or privilege tax on all foreign corporations doing business within its limits; and it is no valid objection that such tax is higher than that imposed on similar domestic corporations." "Gross receipts in this state" embraces premiums paid by policy holders directly to the home office of the company in Pennsylvania as well as money collected or received in North Carolina. Pittsburgh Life & Trust Co. v. Young, 90 S. E. 568.

PENNSYLVANIA.

FOREIGN CORPORATIONS doing business in Pennsylvania are liable for the bonus tax, imposed under the Act of May 8, 1901 P. L. 150, on the amount of the capital actually employed in Pennsylvania and not upon the proportion of their capital stock employed in the state. Commonwealth v. Schwartzschild & Sulzberger Company, 2 Dep. Rep. (1916) 2915, Commonwealth v. United Cigar Stores Co., 2 Dep. Rep. (1916) 2921, Commonwealth v. The Imperial Pneumatic Tool Co., 2 Dep. Rep. (1916) 2923.

THE MERCANTILE LICENSE TAX provided for in Act of May 2, 1889, P. L. 194 may not be imposed upon a dealer living in Maryland, who hauls pianos into Pennsylvania, leaves them on approval and subsequently sells them. Such a transaction is interstate commerce. 2 Dep. Rep. (1916) 2814.

UNFAIR METHODS OF COMPETITION.

UNITED STATES DISTRICT COURT (N. J.)

"RUBBERSET" has acquired a secondary meaning and denotes the brushes manufactured by the Rubberset Company. A competitor may not use the words "Set in Rubber" or similar words, on or near the ferrule of any of the brushes which it manufactures except on the handle proper, in which latter place the full name of

the manufacturer must appear. Display matter, labels, boxes and containers must contain the statement that brushes marked "set in rubber" are not manufactured by the Rubberset Company. Rubber & C. H. T. Co. v. F. W. Devoe & C. T. Reynolds Co., 233 Fed. 150.

UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

"TOASTED CORN FLAKES." The Kellogg Toasted Corn Flake Co. is not entitled to relief on grounds of unfair competition against the Quaker Oats Company's sale of a food product packed in cartons bearing the words "Toasted Corn Flakes." "There is no evidence tending to show that defendant either through dress or lettering imitates the carton or advertising of appellant. It is true that there is some resemblances in surface coloring between the two sets of cartons, but their appearance as a whole is strikingly different." Kellogg Toasted Corn Flake Co. v. Quaker Oats Co., 235 Fed. 657.

INCOME TAX.

RULINGS AND REGULATIONS.

For preceding reference to rulings see Corporation Journal, page 266.

Residents of this country, whether individuals or corporations, who are nominal or record owners of stock actually owned by non-resident aliens will be held liable for the tax which may be due on the dividends, unless the actual owner is disclosed. This disclosure may be made by using Form 1087 as revised November 29, 1916. When the actual owner is thus disclosed the record owner in this country will be held accountable for the tax and tax returns as agent for the non-resident alien owner. When such owner is a foreign corporation not having an office or place of business in this country the normal tax must be paid and the return for the corporation on Form 1030 or 1031 must be filed either by the resident record owner or the actual owner. If the actual owner is an individual a return must be filed by him or for him on Form 1040 whenever the amount of dividends exceeds $3,000 and the supertax must be paid by him or for him when the net amount of dividends exceeds $20,000. When the actual owner is a partnership no return need be made and no tax need be paid by the resident record owner, but the certificates (Form 1087 Revised) disclosing such ownership must be filed with the local collector. (T. D. 2401). This regulation also provides that when the record owner is a foreign corporation not having an office or place of business in this country, the normal tax must be withheld at the source by the corporation paying the dividend, regardless of the status or taxability of the actual owner. This regulation is stated by Treasury officials to repeal the former regulations on the subject, T. D. 2382 and T. D. 2386 (p. 602).

A representative of a non-resident alien in this country, as defined by T. D. 2313, is absolved from liability for making returns or paying the tax as agent if all the income for the year has been paid over to the non-resident alien on or before

September 8, 1916, but if such representative shall after that date have in his custody or control any income of such non-resident alien the representative is required to make the return and pay the total tax due upon income which has been in his custody for the entire year (p. 605).

A decision of the Massachusetts Supreme Judicial Court holds the tenant liable for the income tax of the landlord under the terms of a lease which covenanted that the lessee should pay "all taxes * * * which may be levied upon or in respect of the rent payable" (p. 606).

New forms were issued in December for the annual return of income of individuals (Form 1040), fiduciaries (Form 1041) insurance companies (Form 1030), mutual insurance companies (Form 1030A), for claiming the benefit of deductions against the withholding agent at the end of the year (Form 1008) for claiming deductions during the year (Form 1088) and for claiming the personal exemption (Form 1007).

A regulation has been issued prescribing the procedure to be followed when the new form No. 1088 is used (p. 613).

The two per cent. normal tax must be withheld on all payments made in 1917, whether the payment was due in 1916 or 1917 (p. 616).

Where revised forms of ownership certificates have not been prescribed and issued the old forms may be used by changing the reference "1%" to "2%" normal tax (p. 631).

(NOTE.—The page references are to our Income Tax Service, 1916, in which these rulings are printed in full. Some of the rulings are formal treasury decisions; others are contained in letters answering specific questions.)

FEDERAL ESTATE TAX.

RULINGS AND REGULATIONS.

For preceding reference to rulings see Corporation Journal, page 266.

Income earned after decedent's death and appreciation in values during administration are not to be returned as a portion of the gross estate (p. 27).

Tentative returns may be filed by executors one year after death of decedent where a complete return is impossible because of delay in administration but advance payment of the tax will not be accepted if the estate has not reached such a stage of settlement that a reasonably accurate return can be made (p. 28).

Form 706 has been prescribed and issued for use by executors, etc., in reporting to the collector (p. 29).

The 30 day notice, the return and the payment of the tax will be required of representatives in this country of non-resident decedents having custody of property where no executor acts within the required time (p. 33).

(NOTE.—The page references are to our War Tax Service where these rulings are reported in full.)

MUNITION MANUFACTURER'S TAX.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 250.

Form 1089 has been prescribed and issued for use in reporting net profits or income for 1916 (p. 217).

(NOTE.—The page reference is to our War Tax Service where this form is printed in full.)

MISCELLANEOUS TAXES.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 266.

A ruling has been issued permitting the stamping of duplicate entries on the importation of wines instead of stamping the casks or cases as heretofore (p. 426).

A ruling has been issued governing the use of still wines and taxpaid spirits in the manufacture of vermuth, liqueurs, cordials and other similar compounds (p. 428).

The wine maker is held responsible for the correct determination of the alcoholic contents of wines (p. 431).

A regulation requires rectifiers of vermuth or taxable liqueurs, cordials, etc., to execute a tax bond and to keep all such taxable articles separate and apart from non-taxable articles (p. 432).

A special ruling has been issued to collectors to guard against fraudulent practices in equalizing wantage and under-guaging distilled spirits.

A ruling regarding packages containing temperance beer provides that packages like those ordinarily used for containing fermented liquor may be used if the words "non-taxable, less than one-half per cent. alcohol," are marked thereon, according to the requirements of the regulation.

Circular No. 625 regarding excessive losses of distilled spirits in bonded warehouses has been revised (p. 437).

A ruling has been issued regarding the exportation of domestic wines free of tax under the act of September 8, 1916 (p. 438).

(NOTE.—The page references are to our War Tax Service, in which these regulations are printed in full.)

CAPITAL STOCK TAX.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 250.

Every corporation whose capital stock has a fair value of $75,000 is required to file a return (p. 620).

Form 707 for domestic corporations and Form 708 for foreign corporations have been prescribed for use in reporting under this law (pp. 621–626).

The language in parenthesis in Question 8 on Form 707, should read ("No. 6 Multiplied by No. 7)" (p. 627).

Treasury Stock is held to be "outstanding" for the purpose of computing this tax. Where preferred and common stock have been issued each class should be listed separately on Form 707 and the value of each added together to compute the fair value of the total capital stock (p. 628).

A compilation of specific rulings made by the Treasury Department in answer to questions contains, among others, the following rulings:

No deduction in the tax is allowed by reason of capital of an American corporation being employed or invested in foreign countries.

Payment of the tax will be accepted when the return is filed, provided there is no question of the amount of tax due, but corporations are not required to pay the tax until after receipt of notice and demand on Form 17.

In item 1 on Form 707 the dollar mark should be omitted in the space provided for the figures.

In item 4 the amount of surplus should be that shown by the books of the corporation at the present time.

In item 5 the amount of undivided profits should be that shown by the books of the corporation at the present time.

In computing the value of the stock under case 3 of item 6 the surplus and undivided profits, if any, should be the average surplus and average undivided profits for the year beginning July 1, 1915, and ending June 30, 1916. Inasmuch as the fair value of the stock ascertained under this case is only an estimate, corporations whose fiscal years ended on December 31, 1915, or on any other date, may use the figures shown by the books on that date.

The estimated earning capacity of a corporation should be its prospective earnings for the next following year and should be expressed in terms of percentage of the par value of the capital stock (p. 629).

The Treasury Department has issued a synopsis of a number of cases showing what the Supreme Court has held to be the meaning of the words "engaged in business." It also holds in this regulation that so-called "Massachusetts trusts" are exempt from the tax (p. 631.)

(NOTE.—The page references are to our War Tax Service where these rulings and regulations are published in full.)

TRADE COMMISSION.

No rulings or opinions have been issued by the Federal Trade Commission since our last report (see Corporation Journal p. 233).

A NEW WAY OF MEETING THE OLD QUESTION OF STOCKHOLDERS' LIABILITY.

The Corporation Law of Virginia provides that subscriptions to the capital stock of any corporation may be paid in money, property or labor and that there shall be no individual or personal liability on any subscriber beyond the obligations to comply with such terms as he may have agreed to in his contract of subscription.

A corporation may dispose of its stock or bonds at such prices, for such consideration, and on such terms and conditions as it sees fit provided that before making an issue of its stock or bonds it shall file with the State Corporation Commission a statement of the basis or financial plan upon which such stock or bonds are to be issued.

In a leading case (Monk, et al v. Barnett, et al, decided June 13, 1912; 75 S. E. 185), the Supreme Court of Appeals of Virginia made the following comment on the above provisions of the statutes:

"This new policy now in vogue in this state has not only in view the granting of a charter to any three or more individuals to conduct, as a corporation, any business that might be conducted by an individual or individuals, within the state, but invites the application for such charters, and provides that all persons, firms, partnerships, or other corporations contracting with the corporation chartered in the state must look to the records of the State Corporation Commission for information there to be found, or suggested, as to the character, location, and value of the assets of the corporation, and if they fail to look to said records, or fail to make proper inquiry along lines suggested by these records, and sustain a loss or injury in consequence of such neglect of duty, they shall have no remedy in the courts against the stockholders having certificates of fully paid stock for such loss or injury.

"One who is advised or might have been advised as to the character and value of the assets of a corporation, and extends credit to the corporation, cannot, in the absence of fraud in the organization of the company, or the issuing of its stock or bonds, complain that the assets of the company were not as valuable as he expected them to be, and he has no remedy or right of action against the stockholders of the corporation holding its fully paid stock."

Further information regarding this statute and its practical effect may be obtained by lawyers from our nearest office.

THE CORPORATION TRUST COMPANY.